

REMARKS/ARGUMENTS

The Examiner has delineated the following inventions as being patentably distinct:

Group I: Claims 2, 4 and 8, drawn to a mutant  $\alpha$ -amylase derived from SEQ ID

NO:4 and a detergent comprising the same; and

Group II: Claims 5-7, drawn to a polynucleotide encoding a polypeptide, vector comprising said polynucleotide, a host cell comprising the vector and a method of making said polypeptide using said host cell.

Applicants provisionally elect, with traverse, Group I (Claims 2, 4 and 8) in view of the following arguments.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (M.P.E.P. § 803).

The claims of Group I are integrally linked with the claims of Group II. The claims of Group II (a gene encoding a mutant  $\alpha$ -amylase) are critical to making the mutant  $\alpha$ -amylase of Group I. Therefore the claims of Groups I and II are interdependent and should be examined together. There is a commonality that exists between Group I and Group II. It is a technical relationship that involves common features that define the contribution which each of the groups taken as a whole makes over the prior art. Claims to the necessary reactants for producing the claimed product must be examined along with the claims to the elected invention. The gene or vector containing the gene is critical to the mutant  $\alpha$ -amylase of Claims 2, 4 and 8.

The Examiner simply alleges that the claims of Group I are unrelated to the claims of Group II and do not require each other for practice. However, the Examiner has failed to

supply any references or specific examples to support the allegation of separate invention, and the Office has failed to show that a burden exists in searching all of the claims. Different classification does not necessitate different inventions. Restriction is only proper if the claims of the restricted groups are not related.

Further, M.P.E.P. § 803 states as follows:

If search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits even though it includes claims to distinct and independent inventions.

Applicants submit that a search of all the claims would not constitute a serious burden on the Office.

Further, Applicants reserve the right to file a divisional application on the non-elected subject matter, if so desired, and be accorded the benefit of the filing date of the parent application.

Applicants respectfully submit that the above-identified application is now in condition for examination on its merit, and an early notice of such action is earnestly solicited.

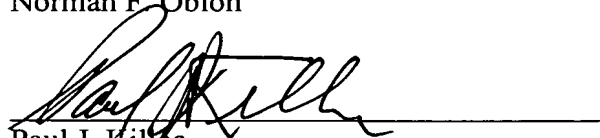
Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 06/04)



Paul J. Killos  
Registration No. 58,014